

Combined Declaration and Power of Attorney for Patent Application

Docket Number: 1530.0060004/EKS/EJH

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter that is claimed and for which a patent is sought on the invention entitled Treatment of Cancer Using Cytokine-Expressing Polynucleotides and Compositions Therefor, the specification of which is attached hereto unless the following box is checked:

was filed on April 21, 2000;
as United States Application Number 09/557,907; and
was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information that is material to patentability as defined in 37 C.F.R. § 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application, which designated at least one country other than the United States listed below, and have also identified below any foreign application for patent or inventor's certificate, or PCT international application having a filing date before that of the application on which priority is claimed.

| Prior Foreign Application(s) | Priority Claimed | | |
|------------------------------|------------------|------------------------|----------------------------------------------------------|
| (Application No.) | (Country) | (Day/Month/Year Filed) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (Application No.) | (Country) | (Day/Month/Year Filed) | <input type="checkbox"/> Yes <input type="checkbox"/> No |

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

| | |
|----------------------------------------|---------------------------------------------|
| <u>60/067,087</u> (Application No.) | <u>November 20, 1997</u> (Filing Date) |
| <u>60/079,914</u> (Application No.) | <u>March 30, 1998</u> (Filing Date) |
| <u>60/100,820</u> (Application No.) | <u>September, 15, 1998</u> (Filing Date) |

I hereby claim the benefit under 35 U.S.C. § 120 of any United States application(s), or under § 365(c) of any PCT international application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose information that is material to patentability as defined in 37 C.F.R. § 1.56 that became available between the filing date of the prior application and the national or PCT international filing date of this application.

| | | |
|----------------------------------------|-------------------------------------------|-------------------------------------------------------------|
| <u>09/196,313</u> (Application No.) | <u>November 20, 1998</u> (Filing Date) | <u>abandoned</u> (Status - patented, pending, abandoned) |
| | | <u>(Status - patented, pending, abandoned)</u> |

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

Robert G. Sterne, Esq., Reg. No. 28,912; Edward J. Kessler, Esq., Reg. No. 25,688; Jorge A. Goldstein, Esq., Reg. No. 29,021; Samuel L. Fox, Esq., Reg. No. 30,353; David K.S. Cornwell, Esq., Reg. No. 31,944; Robert W. Esmond, Esq., Reg. No. 32,893; Tracy-Gene G. Durkin, Esq., Reg. No. 32,831; Michele A. Cimbala, Esq., Reg. No. 33,851; Michael B. Ray, Esq., Reg. No. 33,997; Robert E. Sokohl, Esq., Reg. No. 36,013; Eric K. Steffe, Esq., Reg. No. 36,688; Michael Q. Lee, Esq., Reg. No. 35,239; Steven R. Ludwig, Esq., Reg. No. 36,203; Raz E. Fleshner, Esq., Reg. No. 34,331; John M. Covert, Esq., Reg. No. 38,759; and Linda E. Alcorn, Esq., Reg. No. 39,588.

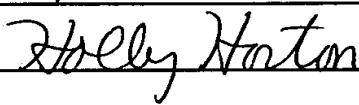
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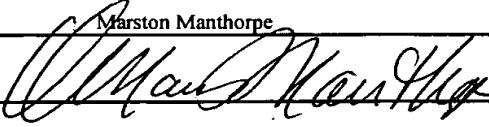
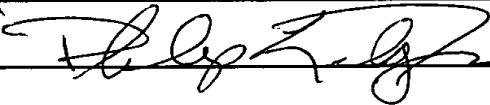
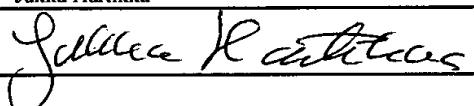
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005-3934

Direct Telephone Calls to:

(202) 371-2600

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

| | |
|-------------------------------------|--------------------------------------------------------------------------------------|
| Full name of sole or first inventor | Holly Horton |
| Signature of sole or first inventor |  |
| Residence | 11791B Spruce Run Drive, San Diego, CA 92131 |
| Citizenship | U.S.A. |
| Post Office Address | Same as above |
| | |
| Full name of second inventor | Suzanne Parker |
| Signature of second inventor |  |
| Residence | 12539 Cypress Woods Court, San Diego, CA 92131 |
| Citizenship | U.S.A. |
| Post Office Address | Same as above |
| | |

| | | |
|------------------------------|--------------------------------------------------------------------------------------|----------------|
| Full name of third inventor | Marston Manthorpe | |
| Signature of third inventor |  | 07/26/00 Date |
| Residence | 12418 Kestrel Street, San Diego, CA 92129 | |
| Citizenship | U.S.A. | |
| Post Office Address | Same as above | |
| Full name of fourth inventor | PHILIP L. FELGNER | |
| Signature of fourth inventor |  | 7/31/2000 Date |
| Residence | 5412 Las Palomas, Rancho Santa Fe, CA 92067 | |
| Citizenship | U.S.A. | |
| Post Office Address | PO Box 3392 RANCHO SANTA FE, CA 92067 | |
| Full name of fifth inventor | Jukka Hartikka | |
| Signature of fifth inventor |  | 07-26-00 Date |
| Residence | 10804 Sunset Ridge Drive, San Diego, CA 92131-2392 | |
| Citizenship | FI | |
| Post Office Address | Same as above | |

(Supply similar information and signature for subsequent joint inventors, if any)

POWER OF ATTORNEY FROM ASSIGNEE



Vical Incorporated, a corporation of California, having a principal place of business at 9473 Towne Center Drive, Suite 100, San Diego, CA 92121, is assignee of the entire right, title and interest for the United States of America (as defined in 35 U.S.C. § 100), by reason of an Assignment to the Assignee executed on 7/26 & 7/31 of an invention known as Treatment of Cancer Using Cytokine-Expressing Polynucleotides and Compositions Therefor (Attorney Docket No. 1530.0060004/EKS/EJH), which is disclosed and claimed in a patent application of the same title by the inventor(s) Holly Horton, Suzanne Parker, Marston Manthorpe, Phillip Felgner and Jukka Hartikka (said application filed on April 21, 2000 at the U.S. Patent and Trademark Office, having Application Number 09/557,907).

The Assignee hereby appoints the following U.S. attorneys to prosecute this application and any continuation, divisional, continuation-in-part, or reissue application thereof, and to transact all business in the U.S. Patent and Trademark Office connected therewith: Robert Greene Sterne, Esq., Reg. No. 28,912; Edward J. Kessler, Esq., Reg. No. 25,688; Jorge A. Goldstein, Esq., Reg. No. 29,021; Samuel L. Fox, Esq., Reg. No. 30,353; David K.S. Cornwell, Esq., Reg. No. 31,944; Robert W. Esmond, Esq., Reg. No. 32,893; Tracy-Gene G. Durkin, Esq., Reg. No. 32,831; Michele A. Cimbala, Esq., Reg. No. 33,851; Michael B. Ray, Esq., Reg. No. 33,997; Robert E. Sokohl, Esq., Reg. No. 36,013; Eric K. Steffe, Esq., Reg. No. 36,688; Michael Q. Lee, Esq., Reg. No. 35,239; Steven R. Ludwig, Esq., Reg. No. 36,203; Raz E. Fleshner, Esq., Reg. No. 34,331; John M. Covert, Esq., Reg. No. 38,759; and Linda E. Alcorn, Esq., Reg. No. 39,588. The Assignee hereby grants said attorneys the power to insert on this Power of Attorney any further identification that may be necessary or desirable in order to comply with the rules of the U.S. Patent and Trademark Office.

Send correspondence to:

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
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Suite 600
Washington, D.C. 20005-3934
U.S.A.

Direct phone calls to 202-371-2600.

FOR: VICAL INCORPORATED
SIGNATURE: RH Zaugg
BY: Robert H. Zaugg, Ph.D.
TITLE: Vice President, Business Development
DATE: 8-1-00



Certificate Under 37 C.F.R. § 3.73(b)

Applicant/Patent Owner: Holly Horton, Suezanne Parker, Marston Manthorpe, Phillip Felgner and Jukka Hartikka, Application No./Patent No.: 09/557,907 Filed/Issue Date: April 21, 2000

Entitled: Treatment of Cancer Using Cytokine-Expressing Polynucleotides and Compositions Therefor

Vical Incorporated, a corporation
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. the assignee of the entire right, title, and interest, or
2. an assignee of an undivided part interest

in the patent application/patent identified above by virtue of either:

A. An Assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B. A chain of title from the inventor(s) of the patent application/patent identified above to the current assignee as shown below:

1. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

2. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

3. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

Additional documents in the chain of title are listed on a supplemental sheet.

Copies of assignments or other documents in the chain of title are attached.

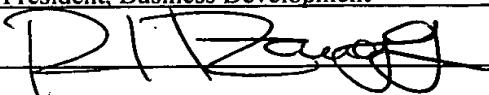
NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the PTO. See MPEP 302-302.8

The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee.

Date: 8-1-00

Name: Robert H. Zaugg, Ph.D.

Title: Vice President, Business Development

Signature: 

ASSIGNMENT

In consideration of the sum of One Dollar (\$1.00) or equivalent and other good and valuable consideration paid to each of the undersigned inventor(s): Holly Horton, Suezanne Parker, Marston Manthorpe, Phillip Felgner and Jukka Hartikka, the undersigned inventor(s) hereby sell(s) and assign(s) to Vical Incorporated (the Assignee) his/her entire right, title and interest, including the right to sue for past infringement and to collect for all past, present and future damages:

check applicable box(es) for the United States of America (as defined in 35 U.S.C. § 100),
 and throughout the world,

(a) in the invention(s) known as Treatment of Cancer Using Cytokine-Expressing Polynucleotides and Compositions Therefor for which application(s) for patent in the United States of America has (have) been executed by the undersigned on 7/26/00 and 7/31/00 (also known as United States Application No. 09/557,907, filed April 21, 2000, in any and all applications thereon, in any and all Letters Patent(s) therefor, and

(b) in any and all applications that claim the benefit of the patent application listed above in part (a), including continuing applications, reissues, extensions, renewals and reexaminations of the patent application or Letters Patent therefor listed above in part (a), to the full extent of the term or terms for which Letters Patents issue, and

(c) in any and all inventions described in the patent application listed above in part (a), and in any and all forms of intellectual and industrial property protection derivable from such patent application, and that are derivable from any and all continuing applications, reissues, extensions, renewals and reexaminations of such patent application, including, without limitation, patents, applications, utility models, inventor's certificates, and designs together with the right to file applications therefor; and including the right to claim the same priority rights from any previously filed applications under the International Agreement for the Protection of Industrial Property, or any other international agreement, or the domestic laws of the country in which any such application is filed, as may be applicable;

all such rights, title and interest to be held and enjoyed by the above-named Assignee, its successors, legal representatives and assigns to the same extent as all such rights, title and interest would have been held and enjoyed by the Assignor had this assignment and sale not been made.

The undersigned inventor(s) agree(s) to execute all papers necessary in connection with the application(s) and any continuing (continuation, divisional, or continuation-in-part), reissue, reexamination or corresponding application(s) thereof and also to execute separate assignments in connection with such application(s) as the Assignee may deem necessary or expedient.

The undersigned inventor(s) agree(s) to execute all papers necessary in connection with any interference or patent enforcement action (judicial or otherwise) related to the application(s) or any continuing (continuation, divisional, or continuation-in-part), reissue or reexamination application(s) thereof and to cooperate with the Assignee in every way possible in obtaining evidence and going forward with such interference or patent enforcement action.

The undersigned inventor(s) hereby represent(s) that he/she has full right to convey the entire interest herein assigned, and that he/she has not executed, and will not execute, any agreement in conflict therewith.

DO NOT FORWARD
TO ASSIGNMENT BRANCH
NOT FOR RECORDATION

The undersigned inventor(s) hereby grant(s) Robert Greene Sterne, Esquire, Registration No. 28,912; Edward J. Kessler, Esquire, Registration No. 25,688; Jorge A. Goldstein, Esquire, Registration No. 29,021; Samuel L. Fox, Esquire, Registration No. 30,353; David K.S. Cornwell, Esquire, Registration No. 31,944; Robert W. Esmond, Esquire, Registration No. 32,893; Tracy-Gene G. Durkin, Esquire, Registration No. 32,831; Michele A. Cimbala, Esquire, Registration No. 33,851; Michael B. Ray, Esquire, Registration No. 33,997; Robert E. Sokohl, Esquire, Registration No. 36,013; Eric K. Steffe, Esquire, Registration No. 36,688; Michael Q. Lee, Esquire, Registration No. 35,239; Steven R. Ludwig, Esquire, Registration No. 36,203; Raz E. Fleshner, Esquire, Registration No. 34,331; John M. Covert, Esquire, Registration No. 38,759; and Linda E. Alcorn, Esquire, Registration No. 39,588; all of STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C., 1100 New York Avenue, N.W., Suite 600, Washington, D.C. 20005-3934, power to insert in this assignment any further identification that may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

IN WITNESS WHEREOF, executed by the undersigned inventor(s) on the date opposite his/her name.

Date: 7/26/00 Signature of Inventor: Holly Horton
Holly Horton

Date: 7/26/00 Signature of Inventor: Suzanne Parker
Suzanne Parker

Date: July 26, 2000 Signature of Inventor: Marston Manthorpe
Marston Manthorpe

Date: 7/31/2000 Signature of Inventor: Philip Folger
Philip Folger

Date: 07-26-00 Signature of Inventor: Jukka Hartikka
Jukka Hartikka

DO NOT FORWARD
TO ASSIGNMENT BRANCH
NOT FOR RECORDATION

IN WITNESS WHEREOF, executed on behalf of the said ASSIGNEE, Vical Incorporated on the date below:

By: Robert H. Zaugg

Robert H. Zaugg, Ph.D.

Title: Vice President, Business Development

Date: 8-1-00